



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 14, 2005

Mr. Michael P. Mondville
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2005-03208

Dear Mr. Mondville:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 222078.

The Texas Department of Criminal Justice (the "department") received a request for the "selection-screening packet" related to the department's selection of an applicant to fill job posting number 024205ID. You state that some of the requested information will be made available to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.122 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information contains the home address, home telephone number, social security number, and family member information of a department employee. In Open Records Letter No. 2005-01067 (2005), issued February 4, 2005, we granted the department a previous determination finding, in part, that home addresses, home telephone numbers, social security numbers and family member information of current or former department employees are excepted from disclosure under section 552.117(a)(3). The previous determination authorizes the department to withhold such information without the necessity of requesting a decision from the attorney general, provided the pertinent facts and circumstances have not changed since the issuance of the prior ruling. In this case, as the relevant law, facts, and circumstances have not changed since the issuance of the prior ruling, we determine that the department must withhold the department employee's home address,

home telephone number, and social security number pursuant to section 552.117(a)(3) of the Government Code in accordance with the previous determination issued in Open Records Letter No. 2005-01067. *See also* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under Gov't Code § 552.301(a)).

We now turn to your arguments regarding the submitted information. Section 552.122 of the Government Code excepts from disclosure "a test item developed by a . . . governmental body[.]" Gov't Code § 552.122(b). In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes "any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated," but does not encompass evaluations of an employee's overall job performance or suitability. Open Records Decision No. 626 at 6 (1994). The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976) (construing statutory predecessor). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8.

Having reviewed the questions at issue, we agree that questions 3 and 4 evaluate an individual's or group's knowledge or ability in a particular area. Furthermore, we find that the answers to these questions might reveal the questions themselves. Therefore, pursuant to section 552.122 of the Government Code, the department may withhold questions 3 and 4 as well as the corresponding preferred and actual answers pursuant to section 552.122 of the Government Code. However, we conclude that questions 1 and 2 are not test items for purposes of section 552.122(b); therefore, you may not withhold question 1 or 2 or their preferred and actual answers under section 552.122.

Next, you claim that some of the submitted information is confidential under section 552.137 of the Government Code. In relevant part, section 552.137 provides that, "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). We note that section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public" but is instead the address of the individual as a government employee. Since the e-mail address contained in the submitted information does not appear to be of the type specifically excluded by section 552.137(c), the department must withhold the e-mail address we marked under section 552.137 unless the department receives consent for its release.

Finally, we note that the submitted information contains a Texas driver's license number to which section 552.130 is applicable. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of

this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, we conclude that the department must withhold the driver's licence number we have marked pursuant to section 552.130.

In summary, the department must withhold the home address, home telephone number and social security number of the department employee pursuant to section 552.117 of the Government Code in accordance with the previous determination issued in Open Records Letter No. 2005-01067. The department may withhold questions 3 and 4 as well as the corresponding preferred and actual answers pursuant to section 552.122 of the Government Code. The department must withhold the marked e-mail address pursuant to section 552.137 of the Government Code unless the owner consents to its release and the marked driver's license number pursuant to section 552.130 of the Government Code. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

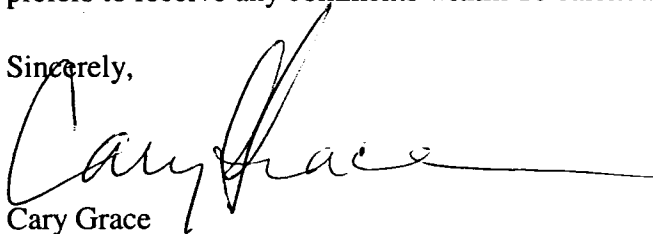
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Cary Grace", with a long horizontal line extending to the right.

Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 222078

Enc. Submitted documents

c: Ms. Holly K. Beard
185 Mathis Dairy Road
Huntsville, Texas 77340
(w/o enclosures)